

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
MARITIME COMMUNICATIONS/LAND	)	EB Docket No. 11-71
MOBILE, LLC	)	File No. EB-09-IH-1751
	)	FRN: 0013587779
Participant in Auction No. 61 and Licensee of)	
Various Authorizations in the Wireless Radio	)	Application FNs. 0004030479,
Services	)	0004144435, 0004193028,
	)	0004193328, 0004354053,
Applicant with ENCANA OIL AND GAS (USA),	)	0004309872, 0004310060,
INC.; DUQUESNE LIGHT COMPANY; DCP	)	0004314903, 0004315013,
MIDSTREAM, LP; JACKSON COUNTY	)	0004430505, 0004417199,
RURAL MEMBERSHIP ELECTRIC	)	0004419431, 0004422320,
COOPERATIVE; PUGET SOUND ENERGY,	)	0004422329, 0004507921,
INC.; ENBRIDGE ENERGY COMPANY, INC.;	)	0004153701, 0004526264,
INTERSTATE POWER AND LIGHT	)	0004636537, and 0004604962
COMPANY; WISCONSIN POWER AND)	
LIGHT COMPANY; DIXIE ELECTRIC)	
MEMBERSHIP CORPORATION, INC.;)	
ATLAS PIPELINE – MID CONTINENT, LLC)	
DENTON COUNTY ELECTRIC)	
COOPERATIVE, INC., DBA COSERV)	
ELECTRIC; AND SOUTHERN CALIFORNIA)	
REGIONAL RAIL AUTHORITY)	
)	
For Commission Consent to Assignment of)	
Authorizations in the Wireless Radio Services)	

To: Marlene H. Dortch, Secretary
Attention: Chief Administrative Law Judge Richard L. Sippel

SkyTel's Motion For an Order
to Resume the Hearing on the Geographic Licenses
And for Discovery Against Maritime and its Asserted Lessees
Based on Maritime Assertions in Interrogatories Response

The undersigned "SkyTel" entities submit this motion.¹ By Order, FCC 12M-7 (rel. Jan. 27, 2012), the presiding Judge directed Maritime to respond fully and completely by February 6, 2012 to the "*Joint Interrogatories to Maritime Relating to Nonconstruction and Discontinuance*

¹ For a period of time, the SkyTel entities are participating pro se in this Hearing case under FCC and APA rules allowing that. See SkyTel filings of last week (by email and hard copy filed and served) and of today (in formal pleading format).

of *Site-Based Operations*” filed by the Enforcement Bureau and SkyTel on December 7, 2011 (the “Interrogatories”). The Maritime Response to Interrogatories (dated Feb 6, 2012, and supplemented Feb 8, 2012) (together, the “Interrogatories Response”) were not full and complete responses (nor timely, considering the late supplement²), nor was the document production responded to at all, as of the time of this Motion’s filing. SkyTel will later address these violations. In this Motion, SkyTel submits one request based on the Interrogatories Response that is critical to this Hearing without further prejudice to SkyTel as follows: The Interrogatories Response contained the following (emphasis and items in brackets added):

[Question 1]

*1. Identify by (a) call sign, (b) location, (c) date of grant, and (d) date of expiration, **each site-based authorization** of which Maritime is currently the licensee or is listed in the FCC's Universal Licensing System as the licensee, including, but not limited to, each site-based authorization that Maritime acquired from Mobex.*

** * * **

[Question 8]

8. Of the authorizations identified in response to Interrogatory No. 1, above, identify by call sign and location each authorization with a Station for which Maritime has end user customers who are actually paying for and using AMTS services.

[Response to Question 8]

Maritime leases spectrum in New Jersey to Pinnacle Wireless for use by the New Jersey Turnpike, Garden State Parkway, and the Meadowlands (Giants Stadium, etc) complex. All sites in New Jersey are impacted by this lease.

Maritime leases spectrum in southern Washington State to Evergreen School District.

² The Supplement itself states *further delays, and further* violations of the Order.

A revised version of Table 2 is being prepared that will include a designation of which sites are currently operating. Maritime will finalize the revised table and serve a further supplemental after it has had an opportunity to consult the site files currently being scanned.

After allegedly operating valid Site-Based stations without breaks for several decades, Maritime (including predecessor Mobex-- Reardon is CEO of both) still does not have the simple, most fundamental information of what stations it is operating, nor can it describe any specific site location (coordinates, street addresses, site owner and manager contact information, etc.).

Maritime leases spectrum in several markets to Spectrum Tracking Systems, including Los Angeles, Dallas, Houston, Birmingham, and Little Rock. These sites are impacted.

Maritime leases spectrum to Central Communications Network in Orlando. The Tampa, Orlando and central Florida sites are impacted by this lease. CCN is in default and Maritime has a judgment against CCN for \$900K in damages. Maritime has not cancelled this lease, is pursuing collection of the judgment, and intends to reactivate operations pursuant to this license in the future.

Maritime has several leases in place around the nation with its purchasers under the Asset Purchase Agreements pending before the FCC. Maritime gets paid an annual fee for use of these licenses. Users have built systems or are in the process of building them, and are using MCLM spectrum for two-way radio communications, Smart Grid, and Positive Train Control, among other uses.

Such paying customers include: (1) Duquesne Power and Light in; (2) EnCana Oil and Gas in Louisiana and Texas; (3) Enbridge in Texas and Louisiana; (4) DCP Midstream in Louisiana; (5) Dixie Electric in seven parishes in Louisiana; (6) Questar Market Resources in Oklahoma; (7) Puget Sound Energy in Washington State; (8) Alliant Energy in Wisconsin, Iowa and Illinois; (9) Shenandoah Electric in Virginia; (10) Rappahannock Electric in Virginia; (11) CoServ in Dallas/Ft. Worth, Texas; and (12) Jackson County Rural Electric in Indiana.

In addition, Maritime within the past year received payment and leased spectrum for testing purposes to several users, including Progress Energy in North and South Carolina, Central Virginia Electric Cooperative in central Virginia, and others whom Maritime prefers not to disclose to our competitor Warren Havens at this time, for obvious reasons of not wanting to lose future business.³

³ Maritime did not obtain any exemption from the Order FCC 12M-7, cited above, to withhold relevant information in its Interrogatories Response based on any such preference to not disclose. Maritime is a signatory to the Protective Order in this hearing, established precisely to allow disclosure of relevant information in the context of any such concerns. However, this is not an issue central to this Motion, except that there are apparently other unnamed entities that Maritime asserts are have taken action, with Maritime, relevant to this Question 8 that Maritime will not disclose. Maritime believes that “testing” meets operational requirements. (See all of the “activation notices” filed by the Maritime predecessor licensees of all of the Maritime site-based licenses: the only statements ever filed as to meeting construction deadlines when they arose are letters from attorney Dennis Brown that these predecessors would “commence testing to commence service on or about [the construction deadline]” or virtually the same language. That is it—no reports of alleged actual construction at any date. This is clear in the Station files of the Maritime site-based licenses.)

This carefully crafted response by Maritime makes clear that Maritime asserts that its alleged lease operations and testing operations *under its Geographic licenses* are also operations under its Site-Based licenses.

Question 8 above referred to Question 1 above, and Question 1 was *only about the Maritime Site-based licenses*: indeed, that is the only discovery under the Interrogatories and the related part of Order FCC 12M-7, cited above, and concerning issue G in the Hearing Designation Order, FCC 11-64 (“HDO”), as is fully clear and known to Maritime. In the Interrogatories Response, Maritime asserts operations under its Geographic licenses as the sole cognizable basis of operating its Site-Based licenses-- at least, the only specific basis described in its Responses, and at minimum, a substantial asserted basis.

For example, Maritime leads the response to Question 8 with alleged operations under spectrum lease to Pinnacle Wireless (which intervened in this Hearing, not opposed by SkyTel) but the potentially in-use lease is shown on ULS as of one of the Maritime Geographic licenses (a preceding Pinnacle lease of some of the Maritime Site-Based licensed spectrum under WRV374 was terminated). The leases Maritime references (with minor exceptions of “pending” leases),⁴ are of its Geographic licensed spectrum (see ULS records; see also the sale-lease agreements between Maritime and the lessee parties named above found on PACER in the Maritime bankruptcy case). It is apparent that Maritime cannot, or in any has not, leased its Site-Based spectrum (except as just indicated, in the past). But in any case, to attempt to defend against Issue G in this Hearing (automatic termination of its Site-Based licenses due to lack of

⁴ Lease to Duquesne, No. 0004149128, and lease to Puget Sound No. 0004299952. Together, the spectrum involved in these two leases is less than 1% of the Maritime total licenses’ spectrum (in “MHz-Pops”). As shown on ULS, both leases are in “Application Status. 2 - Pending.” Pending Status 2 refers to applications that have been submitted and need examiner intervention *before a decision may be reached*. See: http://wtbwww05.fcc.gov/HelpDoc/help_gloss.html. FCC staff appear to be applying policy in accord with Jefferson Radio, 340 F.2d 781.

construction-coverage, and/or permanent operations), Maritime asserts operations under its Geographic licenses.

The validity of the Geographic licenses is thus now at issue under Issue G in the HDO, by the Maritime response cited above, which was given under oath.

Accordingly, SkyTel hereby moves that the Judge issue an Order that all of the issues in the HDO pertaining to revocation of (or other reasons for invalidation of) *all* the Maritime Geographic Licenses, without exception⁵ proceed, without any further delay, commencing with discovery.

SkyTel submits that the HDO issues regarding the Geographic licenses has been delayed without any Order issued for that purposes based on finding that Maritime has any reasonable possibility to qualify for any “Second Thursday” relief. SkyTel further submits that even if said relief is possible and Maritime demonstrated threshold possibility,⁶ it still must prove up under Second Thursday who are the “wrongdoers” and in relation thereto, who are the “innocent

⁵ Maritime, in this Hearing, has appeared and is not conceding at all any part of Issue G. It has identified for this purpose operations under its Geographic licenses noted above as also a basis for finding in its favor as to Issue G, regarding the Site-Based licenses, naming all or most all of the sale assignments it has with parties, but also indicating others that it will not name. It should be assumed that all of the Maritime Geographic licenses are involved, since Maritime holds in its name Site-Based licenses in all of the areas of its Geographic licenses, as shown on ULS.

⁶ Maritime has failed to show that it can meet threshold Second Thursday criteria including that its licenses have less value, in any sales consented to by the FCC (and where the FCC determines fair value), than the “innocent debt.” Indeed, its plan orally submitted at the last in-person hearing in this case (its outlined, upcoming Chapter 11 plan) is that the vast majority of the licenses value will be given to the main creditors far exceeding their asserted debt (and where they will forego seeking that the Depriests pay them under the personal guarantees), etc. Maritime has had the major part of a year to present in this Hearing any conceivable plan, but has failed and it is not possible. The value of the licenses is far too great, and the major debt and wrongdoers relationships make this further impossible (that debt cannot be “innocent” debt, nor can the Depriests’ major direct debt).

creditors,” and the wrongdoers issue is squarely part of the HDO and thus this Hearing.⁷

However, without even considering those SkyTel positions just stated, discovery must proceed regarding Issue G (that is already decided by Order) and that must now include the Geographic licenses due to the Maritime defense discussed above. Put otherwise (in part), if the Geographic licenses are invalid (based on revocation or other cause), then the Maritime defense, cited above, of its Site-based licenses fails.

Thus, SkyTel moves that the Judge issue an Order that the parties proceed with all of the HDO Issues regarding the Maritime Geographic licenses, including discovery by SkyTel and the Enforcement Bureau⁸ against Maritime and all of the parties Maritime named in the Question 8 response cited above, as to relevant documents, interrogatory answers, physical site inspections (of alleged Stations for operations or testing), depositions, etc.

[Execution on next page.]


⁷ To be clear, SkyTel asserts that this Hearing has been delayed without good cause, and asserts prejudice thereby caused. Among other prejudicial effects, the delay has cost SkyTel six-figure sums in legal costs thus far (in actions in this case and related legal proceedings, otherwise not needed), and greater economic losses due to the ongoing Maritime blockage of SkyTel’s co-channel (same frequency) geographic AMTS licenses subject to the bogus Maritime Site-Based licenses, and other losses.

⁸ Based upon recent communications initiated by SkyTel with the Enforcement Bureau, these parties have agreed that SkyTel will provide various background materials to the Bureau relevant to Maritime’s licenses. This may enable more effective and timely communications for cooperation, to the degree possible, in discovery and other matters of this Hearing. However, there is no Order that requires the Bureau and SkyTel to act jointly except in limited circumstances not relevant to this Motion. For these reasons, and to seek mitigation of further delays noted above, SkyTel submits this Motion as an independent party.

Respectfully Submitted,

February 13, 2012

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V2G LLC, and Warren Havens (together, “SkyTel”),

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CERTIFICATE OF SERVICE

The undersigned hereby certify that on this 13th day of February 2012, a true copy of the preceding filing was served via first class, postage paid United States Mail upon the following:

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